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March 11, 2010

Department of State  
Office of the Executive Director  
Bureau of Consular Affairs  
U.S. Department of State  
Suite H1001  
2401 E Street, N.W.  
Washington, DC 20520

RE: Schedule of Fees for Consular Services, Department  
of State and Overseas Embassies and Consulates  
75 Fed. Reg. 6321 (February 9, 2010), Docket DOS-2010-0035

To Whom It May Concern:

United Air Lines, Inc. (“United”) submits these Comments on the State Department’s proposal to change fees for consular services, which would effectively result in either new fees being imposed or increase existing fees between 17% to 493% for 22 types of services.<sup>1</sup> See 75 Fed. Reg. 6321, 6325-26 (February 9, 2010). The changes are being instituted according to this proposal to help the U.S. Government recover the cost for consular services. *Id.* at 6322-23. The proposal also states that proposed fee changes are based on an independent, activity-based cost of service study (“CoSS”) that the Department contracted to review the appropriateness of current fees. *Id.*

United, a member of the Star Alliance, is a major international air carrier, and a large share of United’s passengers travel internationally using U.S. passports, the costs for which are among the subjects of this proposal. Given its expertise in international aviation operations, United has worked closely with U.S. Customs and Border Protection and other U.S. agencies over the years in an ongoing effort to strengthen aviation and border security while ensuring efficient delivery of government services related to international travel. United appreciates the importance of the Department of State’s Consular Services program, and is sensitive to the security and border control concerns that the program serves. At the same time, because of the impact that they have on the

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<sup>1</sup> At the same time, the State Department is reducing consular charges and the fees it charges for four types of services. 75 Fed. Reg. at 6325-26.

U.S. travel industry in general and on international airline operations in particular, United seeks to ensure transparency and accountability for taxes and fees levied on the aviation industry and on its customers – which brings us to the heart of the problem here.

*The CoSS is critical to understanding the State Department's proposed fee increases.*

While the CoSS, as an activity-based costing model, is clearly the technical lynchpin of the current proposal to increase consular fees, notably charges for U.S. passport books, there are no further details available to United and other interested parties about it other than the minimal information the Department cites in its February 9 Notice advising of the proposed fee changes. Even when United takes the State Department's assertions at face value, United has more questions than answers. For example, it is unclear whether the cost of consular time the Department cites of \$231 per hour relates only to consular services performed by U.S. Consular Officers stationed outside of the United States, or whether that rate applies to all services that could be considered to have a consular component (such as citizen services support offered in the United States, and passport issuance).<sup>2</sup> *Id.* at 6325.

United particularly seeks information supporting the Department's plans to increase the application fee for a passport book for an adult from \$55 to \$70; its intentions to increase the passport book security surcharge from \$20 to \$40; and its introduction of a wholly new charge to affix additional passport visa pages in a customer's passport (\$82.48). These charges are striking particularly in view of the far more modest charges for passport card application services, and it is not self-evident that this cost differential is driven by different costs of the documents themselves (book versus the passport card) as public information states that the Government Printing Office charges the Department of State just \$14.80 for the passport book. *See*, [http://www.gpo.gov/pdfs/congressional/factsheet\\_e-passport.pdf](http://www.gpo.gov/pdfs/congressional/factsheet_e-passport.pdf).

United takes note of this possible anomaly since the Department “does not believe that passport application fees are a significant determining factor when Americans decide to travel internationally. The price of a passport book or card remains minor in comparison with other costs associated with foreign travel...” 75 Fed. Reg. at 6327. Contrary to the Department's belief, passport book charges can be a meaningful cost for certain travelers and itineraries.<sup>3</sup>

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<sup>2</sup> If this rate is meant to apply to passport services, United seeks additional detail supporting that hourly rate since public information states that 40 percent of U.S. passports are processed at the National Passport Center in New Hampshire, an area with a wage rate for similar work of \$20-\$30/hour according to the Bureau of Labor Statistics. *See*, <http://www.seacoastonline.com/articles/20090604-NEWS-906040433>.

<sup>3</sup> For example, United offers \$150 round trip (or \$189 including government taxes) to travel between Chicago O'Hare and Toronto Canada from June 6 to June 12. As the passport card is not valid for air, the traveler entertaining such a trip would pay almost as much for a passport book as for the air fare.

*The Administrative Procedure Act (APA) requires access to or more information on the CoSS during the comment period.*

Given its questions, and the importance of access to fairly priced travel documents to support international travel, United has sought a copy of or further details on the CoSS on March 9, 2010. At that time, United was advised that the CoSS is not a study or a report, but rather a model which the Department plans to demonstrate during a public meeting sometime in April or May of 2010. While United looks forward to gaining more insight into the CoSS at such a meeting, the delay in receiving such information limits its ability to thoroughly review and opine on the Department's proposed increase in fees. Consistent with its obligations under the Administrative Procedure Act ("APA"), 5 U.S.C. § 553, the Department should suspend further action on the pending February 9, 2010 fee increase proposal and extend the comment period for at least 60 days following the April or May meeting discussing the CoSS.

The APA requires that the CoSS be made available to interested parties so that they can prepare meaningful comments on the proposal; if that critical study is withheld, the Department would be acting "without observance of procedure required by law," 5 U.S.C. § 706(2)(D). See *Engine Manufacturers Association v. EPA*, 20 F.3d 1177, 1181 (D.C. Cir. 1994). As the D.C. Circuit has made clear, integral to the APA's notice and comment requirement "is the agency's duty 'to identify and make available technical studies and data that it has employed in reaching the decisions to propose particular rules. . . . An agency commits serious procedural error when it fails to reveal portions of the technical basis for a proposed rule in time to allow for meaningful commentary.'" *Owner-Operator Independent Drivers Ass'n, Inc. v. Federal Motor Carrier Safety Administration*, 494 F.3d 188, 199 (D.C. Cir. 2007) (quoting *Solite Corp. v. EPA*, 952 F.2d 473, 484 (D.C. Cir. 1991) (quoting *Connecticut Light & Power Co. v. NRC*, 673 F.2d 525, 530-31 (D.C. Cir. 1982)).<sup>4</sup> That is exactly what is happening here. And, the procedural error cannot be corrected by providing further information at a later date, especially if such a date is well after the close of the comment period.<sup>5</sup>

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<sup>4</sup> See also *Air Transp. Ass'n of Am. v. FAA*, 169 F.3d 1, 7 (D.C. Cir. 1999) ("[T]he most critical factual material that is used to support the agency's position on review must have been made public in the proceeding and exposed to refutation." (quoting *Association of Data Processing Serv. Orgs. v. Bd. of Governors of the Fed. Reserve Sys.*, 745 F.2d 677, 684 (D.C. Cir. 1984)); *Chamber of Commerce v. SEC*, 443 F.3d 890, 899 (D.C. Cir. 2006).

<sup>5</sup> We understand from recent public statements made by Deputy Assistant Secretary for Passport Services Brenda Sprague that the State Department intends to implement the proposed fee increases "as soon as practicable" but that the increased fees are unlikely to take effect before April. See, <http://www.cnn.com/2010/TRAVEL/03/04/passport.fees/index.html>. She has also indicated that "[t]he cost of the passport book [also] includes the cost of maintaining our presence overseas to assist American citizens." *Id.* United, therefore, looks forward to the Department's demonstration of the CoSS to better understand the basis for its proposed fee increases.

*In addition to the State Department's obligations under the APA, it must abide by the Obama Administration's professed commitment to open administrative proceedings.*

On his first full day in office, President Obama issued a Memorandum committing his Administration “to creating an unprecedented level of openness in Government” by working “to ensure the public trust and establish a system of transparency, public participation, and collaboration.” *See* Memorandum of January 21, 2009 on Transparency and Open Government, 74 Fed. Reg. 4685 (January 26, 2009). “Transparency,” the President stated, “promotes accountability,” while “[p]ublic engagement enhances the Government’s effectiveness and improves the quality of its decisions.” *Id.* The Department should be well aware of this point because a Government Accountability Office (“GAO”) study of its passport fee decisions emphasized that “[r]igorous documentation...help[s] support an organization’s decision-making process.”<sup>6</sup> Even outside the rulemaking context, the President admonished agencies to act with the “clear presumption: In the face of doubt, openness prevails.” *See* Memorandum of January 21, 2009 on Freedom of Information Act, 74 Fed. Reg. 4683 (January 26, 2009). When rulemaking is involved, APA requirements make openness an even greater imperative.

Just recently, in an “Open Government Directive” sent to the heads of all Executive Departments and Agencies on December 8, 2009, Office of Management and Budget Director Peter R. Orszag reiterated these points, explaining that “[t]he three principles of transparency, participation, and collaboration form the cornerstone of an open government.” With a view to creating “an unprecedented and sustained level of openness and accountability in every agency,” he directed senior agency leaders to “strive to incorporate the values of transparency, participation, and collaboration into the ongoing work of their agency.” And he made clear that, with respect to information in an agency’s possession, “the presumption shall be in favor of openness (to the extent permitted by law and subject to valid privacy, confidentiality, security, or other restrictions).”

In this case, the unavailability of the CoSS during the comment period runs counter to the President’s commitment to openness. United and other interested parties cannot be left to rely on the Department’s own summary of the CoSS’ findings and its estimates of the cost of consular services. The CoSS itself must be made available to interested parties – so that they can understand, analyze, and critique the assumptions, values and methodologies it employs. Just as the GAO found deficiencies in documentation to support several key decisions of a prior cost study relied on by the Department to set passport fees,<sup>7</sup> the CoSS relied on by the Department here must be subjected to public scrutiny.

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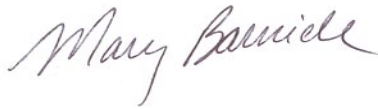
<sup>6</sup> *See* “State Department: Transparent Cost Estimates Needed to Support Passport Execution Fee Decisions,” GAO-08-63 (October 2007) pp. 15-16.

<sup>7</sup> *See Id.* at 15-17.

*Conclusion*

For the foregoing reasons, United respectfully urges the Department to suspend further action on the pending fee increase proposal as announced on February 9, 2010 and to extend the comment period for at least 60 days following the April or May meeting discussing the CoSS that serves as the basis of its proposed actions. Otherwise, the Department will be acting in violation of APA requirements and in contravention of the Obama Administration's oft-professed commitment to openness in government.

Sincerely,

A handwritten signature in cursive script, reading "Mary Brunelle". The ink is dark and the signature is fluid, with a long, sweeping underline.

Manager—International & Regulatory Affairs